

## REMARKS

### 35 USC § 112, Second Paragraph

Reconsideration and allowance are requested of Claims 7 and 10, which have been rejected under 35 USC § 112, second paragraph. Applicant respectfully submits that amendments to Claims 7 and 10 have overcome the 35 USC § 112 rejection. Applicant has amended Claims 7 and 10 so that they are dependant on Previously Added Claim 5, instead of Cancelled Claim 1.

### 35 USC §102 (b)

Reconsideration and allowance are requested of Claims 5, 7, and 10-12 which have been rejected under 35 USC § 102(b). Further, allowance of Claims 13 is requested, which is re-presented formally dependant Claims 8. MPEP § 706.02(b) states that a 35 USC § 102(b) rejection can be overcome by persuasively arguing that the claims are patently distinguishable from the prior art reference, and/or by amending the claims to patently distinguish over the prior art.

Invalidity for anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference. Carella v. Starlight Archery and Pro Line Co., 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed.Cir.1986). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576 (C.A. Fed. 1991).

### Claims 5, 11, and 13

Applicant respectfully submits that Claims 5, 11, and 13 are all distinguishable from Giguere for the same basic reason. As we discussed during the telephone interview, they are distinguishable from Giguere because they all claim the removal of desired finished product from the mill stream directly from the first separation step to occur after the breaking of the kernels of grain into two or more parts. The significance of removal of finished product after the first separation step is two fold, and demonstrates the difference from Giguere. First, by removing finished product, the state of the desired finished product is preserved. In other words, leaving the finished product in the process to go through further milling operations reduces the percentage of grit and increases the percentage of flour – not necessarily a desirable end result. Second, by removing finished product after the first separation, the claimed invention is able to achieve more throughput, allowing for more total production without adding expensive equipment in order to increase the capacity of the milling process.

In Giguere the mill stream undergoes at least two separation steps (more is some embodiments) after degermination before any product is removed from the mill stream. As we discussed during the telephone interview, these separation steps are labeled in Giguere's Figures as "Tail Class", "Thru Class", aspirators, and Tables #1, #2, and #3. To demonstrate that Giguere has more than one separation step after degermination, Giguere states in relation to Figure 5:

[g]enerally the product out of the degerminator is separated into "tail" and "thru" streams, the former being relatively rich in endosperm and the latter being relatively rich in germ and bran. The two streams are then

dried and cooled to reduce the moisture content to approximately 17%. Prior to commencing the grinding steps, the two degerminator streams are preferably placed on gravity tables (or aspirators) as indicated in the flow diagram to achieve some further initial sorting out of germ and endosperm. (emphasis added). (Giguere Col. 4, line 52-61).

With further reference to Giguere's Figure 5, after the second separation using the "gravity tables", the mill stream is sifted a third time in a "break" or "germ" sifter before any finished product is removed. This is clearly distinguishable from Applicant's claimed invention in which at least one of said size classes of milled grain product is removed from the mill stream as desired finished product after:

Claim 5 --"the first separation step to occur after the breaking of the kernels of grain into two or more parts";

Claims 11 – "the first separation step to occur after degermination";

Claims 13 – "each separation step".

These limitations are clearly seen in Applicant's Figures 5 and 6.

With regard to Claim 13, the Examiner's office action states that Giguere's Figure 5 discloses "removing at least one of said size class as the desired end product after each separation step." Applicant respectfully submits that this is not disclosed in Giguere. Giguere's Figure 5, as well as the paragraph from Giguere quoted above, both show that there are at least two separation steps after degermination in which nothing is removed from the mill stream.

The remainder of the rejected claims are all dependant on Claims 5 or 11, and therefore should be allowed for the same reasons.

It is submitted that this response places Applicant's application in condition for allowance, and therefore further and favorable action on this application is requested.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 11, 2003.

  
Ryan N. Carter, Registered Representative

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## ATTACHMENT A

### Amendments to the Claims

Claims 1-4 (Cancelled)

5. (Currently Amended) A method for processing kernels of grain in a mill stream to produce a desired end product comprising the steps of:
- cleaning the kernels of grain;
- breaking the kernels of grain into two or more parts;
- separating the parts according to selected size classes; ~~using at least two separation steps;~~
- removing at least one of said size classes from the mill stream as the desired end product directly from the first separation step to occur after the breaking of the kernels of grain into two or more parts. after at least two separation steps.
6. (Cancelled)
7. (Currently Amended) The method as described in claim 1 5 wherein the grain is corn.
8. (Cancelled)
9. (Cancelled)
10. (Currently Amended) The method of Claim 1 5 further comprising the steps of:
- diverting one or more of the remaining size classes to a germ oil recovery process;

diverting one or more of the remaining size classes of grain to an aspirator and aspirating said size class of grain;

diverting the aspirated grain to a roller.

11. (Currently Amended) A method for processing kernels of grain in a mill stream to produce a desired end product comprising the steps of:

cleaning the kernels of grain;

degerminating the cleaned kernels of grain;

separating the degerminated kernels of grain into selected size classes; ~~using at least two separation steps;~~

breaking the grain further using break rollers in-between separation steps;

removing at least one of said size classes from the mill stream as the desired end product directly from the first separation step to occur after degermination. ~~after at least two separation steps to a first location;~~

diverting the remaining size classes to one or more other locations.

12. (Previously Added) The method of Claim 11 wherein the grain is corn.

13. (Re-Presented formerly dependent Claim 8) A method for processing kernels of grain in a mill stream to produce a desired end product comprising the steps of:

cleaning the kernels of grain;

breaking the kernels of grain into two or more parts;

separating the parts according to selected size classes using at least two separation steps;

removing at least one of said size classes from the mill stream as the desired end product after each separation step.